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Before the  
Federal Communications Commission  
Washington, D.C. 20554

JAN 11 4 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
Policies and Rules  
Concerning Toll Fraud

)  
) CC Docket No. 93-292  
)

To: The Commission

DOCKET FILE COPY ORIGINAL

**COMMENTS OF AERONAUTICAL RADIO, INC.**

Aeronautical Radio, Inc. ("ARINC"),<sup>1</sup> by its attorneys,  
hereby submits these comments in support of the FCC's  
proposals in the above-captioned proceeding.<sup>2</sup> ARINC commends  
the agency for recognizing that current regulations  
unreasonably place liability for toll fraud upon entities  
that are least able to prevent it.<sup>3</sup> The structure of the  
modern communications industry calls for new rules that more  
equitably allocate responsibility to customers, carriers,

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<sup>1</sup> ARINC is the communications company of the air transport industry and represents industry interests in regulatory and other forums. The airlines are substantial users of the telephone carriers' switched services and have been victimized by toll fraud. Accordingly, ARINC and the airlines are significantly affected by the regulatory decisions made in this proceeding.

<sup>2</sup> Policies and Rules Concerning Toll Fraud, CC Docket No. 93-292, Notice of Proposed Rulemaking, FCC 93-496, released December 2, 1993 ("Notice").

<sup>3</sup> ARINC urged the Commission to modify its rules in a related proceeding that led to the adoption of the FCC's Notice. It hereby incorporates those comments by reference. See Petition for Declaratory Ruling and for the Establishment of Policies Relative to the Allocation of Responsibility for Toll Fraud Abuse Involving Combinations of Remote Access Network Services and Customer Premises Systems, ENF-91-07, "Comments of Aeronautical Radio, Inc.," filed Apr. 15, 1991 and "Reply Comments of Aeronautical Radio, Inc.," filed April 30, 1991 (attached).

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manufacturers, and regulatory and law enforcement agencies. Absent adoption of appropriate protections and policies as discussed below, unreasonable financial penalties will continue to be imposed upon users of telecommunications services.

The FCC should, therefore, adopt regulations that provide appropriate incentives -- rather than the disincentives that currently exist -- for all entities to take reasonably available precautions to prevent toll fraud. To that end, ARINC urges the agency to prescribe the requirements carriers and customers must meet to avoid liability for toll fraud.

First, the FCC should hold carriers accountable for toll fraud where:

- They do not clearly inform customers of the vulnerability of service offerings, combinations and configurations, as well as the customers' responsibilities to prevent toll fraud. Carriers also should fully apprise customers of the likelihood of successfully preventing toll fraud so that customers may properly evaluate the risks of subscribing to particular service alternatives. Such warnings should be included not only in the carriers' tariffs, but also in promotional materials and billing statements. Most importantly, the appropriate detail of such notices should reflect the level of vulnerability for the service or services involved.
- They fail to implement technical, administrative and operational means to detect and prevent toll fraud. For example, carriers should be required to monitor abnormal calling patterns -- such as unusual length, number or termination of calls -- and promptly advise customers and take other

appropriate preventive actions where such abnormal usage is discovered.

- They do not take appropriate action to investigate and resolve toll fraud abuse. This would include cooperation with customers and with regulatory and law enforcement agencies.

Second, the FCC's rules should ensure that no liability will attach when customers have taken reasonable precautions to prevent toll fraud. Customers' ability to avoid toll fraud is limited; carriers and manufacturers are better positioned to prevent fraud by virtue of their network expertise and control over critical technology. It follows that customers should not be held accountable for toll fraud if they:

- follow manufacturers' instructions for preventing access by unauthorized users.
- control the distribution and use of authorization codes.
- notify the carrier promptly after learning of toll fraud.
- cooperate with carriers and law enforcement agencies in the investigation of toll fraud.

As a minimum, customers ought not be held liable for toll fraud during any billing cycles where they have not received actual notice, whether from the carrier, invoices, or other means, that such fraud is occurring. Even where a customer shares liability for toll fraud, a carrier should not to be permitted to profit from the fraud. Thus, a carrier ought to be entitled at most to reimbursement of its

out-of-pocket costs associated with the fraud. Such a policy is essential to maximize carrier incentives to prevent toll fraud.<sup>4</sup>

Moreover, past victims of toll fraud are at least equally entitled to the protections of notice and opportunity to take reasonable precautions as are potential future victims. Indeed, the failure of carriers to advise customers of the potential for toll fraud in past years<sup>5</sup> is perhaps more egregious because of customers' lesser awareness of and inability to control toll fraud risks. Accordingly, there simply is no rational basis for only prospectively finding unreasonable tariff provisions that place liability for toll fraud on customers without adequate notice. If such tariff provisions are unreasonable now, they were unreasonable in the past.

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<sup>4</sup> Notice, ¶ 24 (FCC recognition of carrier incentives not to warn of or prevent toll fraud).

<sup>5</sup> Although some carriers provided notice in their tariffs of the responsibility for toll fraud, others did not. Compare MCI Tariff F.C.C. No. 1, Section B.07.01, 32nd Revised Page No. 13 (effective Sept. 15, 1990) and AT&T Tariff No. 12, Section 7.2.10, Original Page 46.2 (effective April 14, 1988) with AT&T Tariff No. 1, Sections 2.4, 2.4.1(A) and AT&T Tariff No. 2, Section 2.4.1(A).

For the foregoing reasons, ARINC urges the Commission to adopt rules consistent with the above to bring fairness to the toll fraud problem in today's telecommunications marketplace.

Respectfully submitted,  
AERONAUTICAL RADIO, INC.

By:

  
\_\_\_\_\_  
John J. Bartlett  
Robert J. Butler  
Kurt DeSoto  
of  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, DC 20006

Its Attorneys

January 14, 1994

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APR 15 1991

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Washington, D.C. 20554

Federal Communications Commission  
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to the Allocation of Responsibility for )  
Toll Fraud Abuse Involving Combinations )  
of Remote Access Network Services and )  
Customer Premises Systems )

ENF-91-07

COMMENTS OF AERONAUTICAL RADIO, INC.

Aeronautical Radio, Inc. ("ARINC"), by its attorneys, hereby responds to the above-captioned petition for declaratory ruling by Pacific Mutual Life Insurance Company.<sup>1</sup> In its Petition, Pacific Mutual requests that the Commission take action regarding toll fraud and inter alia, establish policies both to allocate the costs arising from remote access toll fraud and to require carriers to establish anti-fraud measures.

ARINC is the communications company of the air transport industry and frequently represents the interests of that industry in government forums. The airlines are substantial users of telephone carriers' switched voice services and many have been victimized by remote access-based toll fraud of the

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<sup>1</sup> Petition of Pacific Mutual Life Insurance Company (filed January 31, 1991). See Public Notice, DA-91-284 (released March 17, 1991).

type described in the Pacific Mutual Petition.<sup>2</sup> The airlines therefore strongly support Pacific Mutual's request that the Commission adopt policies (1) to prescribe network-based preventive measures; (2) to require carriers to inform their customers about the potential for toll fraud, the respective responsibilities of carriers and customers in the event of toll fraud; and (3) the carriers' ability to prevent and remedy such incidents; and to protect customers by limiting their liability for costs resulting from toll fraud.

Remote access toll fraud is a pervasive and growing network problem that is burdening scores of IXC network customers.<sup>3</sup> It is national in scope and likely to escalate if not effectively and promptly addressed. Given that prophylactic measures beyond those now incorporated in PBX technology are largely beyond customers' control, the problem will be curbed only if the Commission encourages or requires carriers to take appropriate action.

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<sup>2</sup> A number of airlines have been plagued by serious incidents of toll fraud, and the carriers servicing these airlines frequently have attempted to hold them responsible for charges incurred by fraud. One airline communications system incurred \$92,000 in charges for a single month due to international calls placed by an unauthorized caller -- in this case, a computer "hacker". A number of other airlines frequently have been assessed charges in excess of \$100,000 each for a total now in dispute of more than \$1 million.

<sup>3</sup> Petition at 10.

Unfortunately, to date interexchange carriers largely have resisted taking responsibility for toll fraud.<sup>4</sup> However, their arguments to escape liability for toll fraud charges are based on policies developed in outdated cases that deal with circumstances not comparable to the current telecommunications environment.<sup>5</sup> The anachronistic policies imposing liability for toll fraud upon subscribers alone arose from cases dealing with unauthorized calling from a subscriber's own premises, a factual situation wholly different from that implicated in modern remote access-based fraud, which is the focus of Pacific Mutual's petition. Because the telephone industry, its service offerings, and its technology have changed so dramatically from those early years, national policy regarding the responsibility for network abuse such as toll fraud must adapt as well. Clearly, as between carriers and customers, both the equities and their respective abilities to prevent losses have shifted substantially in recent years.

The absence of a national policy that adequately responds to the contemporary realities of toll fraud has allowed interexchange carriers to avoid addressing toll fraud issues, or to do so in an inconsistent, discriminatory, and ineffectual manner. Notwithstanding the seriousness and

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<sup>4</sup> Id. at 11-12.

<sup>5</sup> Id. at 3.



pervasiveness of toll fraud, and the escalating rate at which it is occurring, interexchange carriers have not taken affirmative action to prevent or alleviate the problem. Yet, they are best positioned to do so by virtue of their network expertise and control over critical technology.

Moreover, carrier tariffs do not consistently address the issue of toll fraud or clarify the respective obligations of carriers and customers arising from it. For example, while at least one set of tariff provisions filed by MCI do notify subscribers of obligations connected with toll fraud,<sup>6</sup> as do those contained in AT&T Tariff F.C.C. No. 12,<sup>7</sup> other AT&T tariffs such as Nos. 1 and 2 are completely silent on the issue of customer responsibility for charges associated with third-party fraud.<sup>8</sup> Even where the tariffs are more explicit, however, carriers do not uniformly and consistently warn customers that they may be vulnerable to toll fraud with certain service configurations. As a result, customers are not aware of the existence, much less the extent of this potential problem. Carriers nonetheless

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<sup>6</sup> See MCI Tariff F.C.C. No. 1, Section B.07.01, 32nd Revised Page No. 13, effective Sept. 15, 1990.

<sup>7</sup> See AT&T Tariff F.C.C. No. 12, § 7.2.10, Original Page 46.2 (effective April 14, 1988).

<sup>8</sup> See AT&T Tariff F.C.C. No. 2, §§ 2.4, 2.4.1(A); AT&T Tariff F.C.C. No. 1, § 2.4.1(A).

frequently demand full payment for toll fraud-based charges assessed against these hapless customers.

Because interexchange carriers have not systematically, uniformly, or effectively responded to toll fraud concerns, and are not likely to do so if they are not given the proper incentives, the Commission should adopt guidelines and policies to effectuate solutions to the current toll fraud problem. Such guidelines should establish requirements for network changes to protect against unauthorized service usage, define the responsibilities of carriers to their customers for charges incurred, and insure that carriers fully inform their customers of their toll fraud policies and pursue fair dealings in connection with those policies.

Specifically, in addressing remote access toll fraud issues, the Commission should adopt policies and guidelines that accomplish the following objectives:

- Toll Fraud Prevention: The Commission should require interexchange carriers to develop and implement means to detect and prevent remote access toll fraud. This includes both technical measures and administrative or operational procedures. For example, it appears that AT&T's security practices have the capacity to detect abnormal calling patterns.<sup>9</sup> In addition, carriers should adapt the service offerings they provide their customers to assist them in their efforts to detect and prevent toll abuse.
- Prompt Remedial Action: Carriers should be required to detect and remedy incidents of toll fraud in a timely and expedient manner.

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<sup>9</sup> Petition at 41.

• Limitations on Customer Liability: Responsibility for remote access toll fraud should ultimately be borne by the carriers. In order to limit customer liability, the Commission should adopt policies that include forgiveness for toll charges incurred in at least the first two billing cycles in which toll fraud is detected, if customers notify their carriers promptly when they discover evidence of abnormal usage and take other action deemed reasonable to mitigate toll fraud damage. Of course, if carriers fail to take appropriate action to investigate and resolve toll fraud concerns within that period, they would remain liable for the full amount of any losses.

Notification and Disclosure: The Commission should require carriers to inform customers of the vulnerability of certain service offerings, combinations and configurations to toll fraud, any customer obligations to prevent toll fraud, the customers' responsibilities to the carrier to mitigate damages, and other important information regarding the prevention and investigation of toll fraud cases. Carriers should be required to alert victims of toll fraud in a prompt fashion and to fully apprise them of necessary remedial action and the likelihood of successfully preventing further incidents of fraud.

Accordingly, ARINC urges the Commission to adopt the foregoing policies to bring rationality and fairness to the

remote access toll fraud problem in modern telecommunications.

Respectfully submitted,

AERONAUTICAL RADIO, INC.

By 

John L. Bartlett

Robert J. Butler

Aliza F. Katz

of

WILEY, REIN & FIELDING

1776 K STREET, N.W.

Washington, D.C. 20006

(202) 429-7000

Its Attorneys

April 15, 1991

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 1991, I caused copies of the foregoing "Comments of Aeronautical Radio, Inc." to be mailed via first-class postage prepaid mail to the following:


Victor J. Toth  
Law Offices of Victor J. Toth  
2719 Soapstone Drive  
Reston, VA 22091

Mary Beth Richards  
Chief, Enforcement Division  
Common Carrier Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 6006  
Washington, D.C. 20554

James D. Schlichting  
Chief, Policy Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 544  
Washington, D.C. 20554

Richard M. Firestone  
Chief, Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 500  
Washington, D.C. 20554

Downtown Copy Center  
1114 21st Street, N.W.  
Washington, D.C. 20036

  
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Fraud Abuse Involving Combinations  
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ENF-91-07

**REPLY COMMENTS OF AERONAUTICAL RADIO, INC.**

John L. Bartlett  
Robert J. Butler  
Aliza F. Katz  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 429-7000

**Attorneys for Aeronautical  
Radio, Inc.**

**April 30, 1991**

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## SUMMARY

The comments submitted in response to Pacific Mutual's Petition for Declaratory Ruling in this proceeding confirm that Commission guidelines and policies in step with the contemporary telecommunications environment are greatly needed to address effectively the serious and growing problem of remote access toll fraud. Such initiatives are necessary to replace anachronistic toll fraud policies upon which carriers have long relied to justify their oppressive toll fraud practices. As demonstrated by the record, these practices include: (1) failing to set out toll fraud obligations clearly in tariffs; (2) marketing services without informing customers of their susceptibility to toll fraud; (3) encouraging customers to switch to service offerings with unlimited toll fraud liability; (4) disclaiming responsibility for toll fraud prevention, which carriers -- and not users -- are best positioned to initiate and maintain; and (5) enforcing tariff provisions in a discriminatory manner by selectively prosecuting toll fraud cases.

Accordingly, the Commission must declare these carrier practices to be unjust, unreasonable and unlawfully discriminatory and establish toll fraud policies that encourage carrier-initiated toll fraud prevention, require



prompt remedial action by carriers, articulate limitations on customer liability, and impose notification and disclosure requirements. By doing so, the Commission will have taken substantial steps in combatting the mounting problem of toll fraud.

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REPLY COMMENTS OF AERONAUTICAL RADIO, INC.

Aeronautical Radio, Inc. ("ARINC"), by its attorneys, hereby files its reply to comments on the above-captioned Petition for Declaratory Ruling filed by Pacific Mutual Life Insurance Company.<sup>1</sup> ARINC submits that the unreasonableness of carriers' positions on toll fraud is evident from the inherent contradictions in their practices. On the one hand, carriers assert that the responsibility for preventing fraud and the liability for any losses caused by it rest solely with users. On the other hand, despite their undisputed superior knowledge and expertise about toll fraud problems, they fail to recognize any obligation to warn users even when marketing the very services that are vulnerable to fraud. Such callous disregard for carriers' public interest

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<sup>1</sup> See Public Notice, "Pacific Mutual Insurance Company Asks FCC to Declare Certain Tariff Provisions Unlawful and Establish Policies to Alleviate the Toll Fraud Burden on Users," released March 14, 1991.

responsibilities simply cannot be countenanced under the Communications Act.

I. INTRODUCTION

This proceeding was initiated by a Petition for Declaratory Ruling in which Pacific Mutual urged the Commission to address the serious and mounting problem of remote access toll fraud by 1) prescribing rules and tariff provisions for allocating responsibility for toll fraud; 2) establishing policies that would promote network-based preventative measures; and 3) ruling that ambiguous provisions in AT&T's principal business tariffs do not permit AT&T to hold customers liable for fraudulent calls originating from remote sites and routed through customer PBXs.

With few exceptions, most of the opening round commenters recognize that the increasingly varied and sophisticated telecommunications environment today necessitates the recognition of toll fraud policies responsive to modern network concerns. A majority of commenters, many of them telecommunications users, agreed with Pacific Mutual that toll fraud is a serious and widespread problem.

Many of the commenters have been the victims of toll fraud themselves, and their accounts are strikingly similar. Telecommunications customers frequently became toll fraud

victims after reconfiguring their communications services to incorporate new communications capabilities, often at the suggestion of their carriers. Carriers marketed and sold these communications services, emphasizing their technological efficacy and responsiveness to the business needs of its customers, without ever informing customers that these new configurations were susceptible to remote access toll fraud, a problem of which the carriers were fully aware.

Notwithstanding the growing incidence of toll fraud, carriers continue to act with impunity by relying on anachronistic cases that apportion liability based upon circumstances wholly different from those implicated in contemporary instances of remote access toll fraud. Moreover, as one commenter indicates, AT&T actually has a new incentive to permit toll fraud, and not to discourage it, as price cap regulation allows AT&T to retain profits from payments for unauthorized use.<sup>2</sup>

Predictably, only the carriers argue that customers should remain responsible for losses incurred due to fraudulent toll use, thus seeking to maintain the unfair position they hold in assessing liability. Specifically, without providing any supporting evidence, they assert that PBX owners, and not carriers, are in the best position to prevent remote access toll fraud. Carriers also apparently

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<sup>2</sup> Comments of the Perkin-Elmer Corporation at 2-3.

refuse to concede any obligation to warn customers of their susceptibility to toll fraud. As discussed below, when considered against the background of the modern telecommunications environment, these arguments should be rejected and the carriers' toll fraud policies declared unjust, unreasonable, and unlawfully discriminatory in violation of the Communications Act.

II. USERS HAVE DEMONSTRATED THAT THEY CANNOT PRECLUDE TOLL FRAUD DESPITE TAKING REASONABLE PREVENTATIVE MEASURES

The carriers uniformly argue that customers are best able to prevent toll fraud abuse, although they do not support this proposition with substantive evidence.<sup>3</sup> As the comments reveal, however, users have taken numerous steps to secure their communications systems, including the installation of additional layers of access codes in user PBXs, the prompt reporting of anomalous billings to carriers,<sup>4</sup> routine changes in access codes,<sup>5</sup> and operator

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<sup>3</sup> See, Comments of AT&T at 11-12; Comments of Southwestern Bell Corporation at 2-3; Comments of MCI Telecommunications Corporation at 2-3.

<sup>4</sup> See, e.g., Complaint of The Perkin-Elmer Corporation at iii, filed March 22, 1991. Complaint of Credit Card Calling Systems, Inc. at 11, filed September 28, 1990.

<sup>5</sup> Comments of Trailer Train Company at 4.

supervision of calls.<sup>6</sup> Despite implementing these measures, users largely have been unable to prevent remote access toll fraud.

The inability of users to thwart remote-access fraudulent call attempts effectively stems from the limitations of their PBXs, as well as monitoring software and equipment, to detect and prevent unauthorized access before fraudulent calls are made.<sup>7</sup> Furthermore, as one commenter has noted, "the IXCs have succeeded in shifting what has traditionally been network vulnerability to fraud into private systems. As IXC networks have shifted away from in-band signaling, PBX's became more likely targets for fraud."<sup>8</sup> Carriers have spearheaded technological changes, shifting vulnerability to fraud to the PBX, notwithstanding the fact that PBX technology has not evolved sufficiently to permit users to deal with the problems that historically had been the responsibility of carriers.

In particular, AT&T fails to provide evidentiary support for its argument that PBX-generated solutions are better suited to prevent and minimize the risks of toll fraud abuse

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<sup>6</sup> Complaint of Credit Card Calling Systems, Inc. at 11.

<sup>7</sup> Complaint of the Perkin-Elmer Corporation at 20.

<sup>8</sup> Comments of North American Telecommunications Association at 7-8.

than those available through the network.<sup>9</sup> The near unanimous position of users that carriers are best positioned to prevent toll fraud persuasively counters AT&T's contrary statement.<sup>10</sup> Moreover, numerous safeguards suitable to prevent toll fraud are identified in the record for use by the LEC and IXC industries.<sup>11</sup> Yet, carriers currently claim to have no reason to explore methods of preventing or mitigating toll fraud, and under price cap regulation AT&T actually benefits from its occurrence. Only when the Commission expressly affirms carriers' liability for the costs arising from remote access toll fraud will they be encouraged to develop and deploy anti-fraud technology and other preventative initiatives.

The argument made by carriers that users are best positioned to prevent toll fraud is in part founded on early toll fraud cases where fraudulent use occurred on the

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<sup>9</sup> In a similar vein, AT&T contends that PBX owners are better positioned to obtain legal remedies against alleged perpetrators of toll fraud, and thus should remain liable for toll fraud charges. Comments of AT&T at 17. This argument is unfounded, as carriers are in a much better position than users to identify the source of fraudulently made calls and have the resources and access to information required for the successful prosecution of those callers.

<sup>10</sup> Comments of Trailer Train Company at 5; Comments of Metro-North Commuter Railroad at 2; Comments of North American Telecommunications Association at 10; Comments of Maison Blanche Department Stores at 2; Comments of The Securities Industries Association at 8.

<sup>11</sup> Comments of Science Dynamics Corporation at 2-5.

customer's premises. But, unlike customers in those early cases, users today are not the least cost avoiders of toll abuse. Considering the dramatic technological evolution of the network, the concomitant limitations of PBX monitoring functions, and users' conscientious but unsuccessful attempts to prevent toll fraud, carriers' reliance on outdated notions of user liability for toll fraud is unfounded. Today, the only reasonable policy requires carriers to assume greater responsibility for preventing, and liability for the occurrence of, toll fraud. But, unless the Commission declares now that its policies and the Communications Act require such apportionment, carriers will continue to shirk their responsibilities and toll fraud will persist.

**III. CARRIERS HAVE FAILED TO REFUTE PETITIONER'S SHOWING THAT THEY HAVE AN OBLIGATION TO WARN USERS ABOUT TOLL FRAUD AND THAT THEY HAVE PURSUED DISCRIMINATORY PRACTICES IN ASSESSING TOLL FRAUD LIABILITY**

None of the carriers that have submitted comments in this proceeding rebut the argument of numerous commenters that carriers have consistently failed to inform users of their susceptibility to toll fraud. But, it is clear that carriers' failure to warn their users about potential toll fraud problems is not a result of unfamiliarity with the problem.

As evidenced by one of the carrier's attachments, an AT&T presentation on toll fraud apparently made to a security



seminar, AT&T is well versed on the topic of toll fraud.<sup>12</sup> AT&T also attaches to its own comments a circular sent by MCI to its customers informing them about toll fraud.<sup>13</sup> Thus, while AT&T acknowledges the need to educate members of the industry about toll fraud, and while it attaches MCI's circular as evidence of carrier notification efforts, AT&T itself disclaims any obligation to apprise its customers of toll fraud problems.<sup>14</sup>

Furthermore, while the fraud preventative measures for PBXs contained in the AT&T security presentation represent precisely the types of information of which customers should be advised as part of the carriers' marketing and sales efforts, the record reveals that carriers do not generally provide such warnings.<sup>15</sup> Carriers provide no good explanation for why they do not inform users about potential toll fraud problems and make no persuasive argument about why they should not be obligated to do so.

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<sup>12</sup> See Comments of Southwestern Bell Corporation (Attached Exhibits).

<sup>13</sup> See Comments of AT&T (Attached Exhibit).

<sup>14</sup> It certainly is anomalous that AT&T would showcase the efforts of one of its competitors to inform users of toll fraud problems, yet dismiss the significance of its apparent lack of any similar interest.

<sup>15</sup> Similarly, there is no evidence in the record to suggest that carriers apprise PBX customers of the security "mechanisms" identified in the comments of Litel Telecommunications Corporation.